

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
No. 4:93-CR-40-2H
No. 4:18-CV-101-H

)
TERVEUS HYPPOLITE,)
Petitioner,)
v.) **ORDER**
UNITED STATES OF AMERICA,)
Respondent.)

This matter is before the court on petitioner's motion to vacate pursuant to 28 U.S.C. § 2255, [DE #44 and #50]. The government has filed a motion to dismiss the § 2255 motion as successive. [DE #58].

This action was initiated after the enactment and implementation of habeas corpus reforms contained in Title I of the "Antiterrorism and Effective Death Penalty Act of 1996." Title 28 U.S.C. § 2244(b)(3)(A) provides that before a second or successive habeas corpus application may be filed in the district court, the applicant must move the appropriate court of appeals for an order authorizing the district court to consider the application. 28 U.S.C. § 2244(b)(3)(A); see also 28 U.S.C. § 2255(h) (requiring successive motions to be certified by a panel of the appropriate court of appeals as provided in 28 U.S.C. § 2244).

The petitioner has filed at least one prior § 2255 claim, [DE #15 at 6, 7]; therefore, this court is without jurisdiction to review the matter until authorized to do so by the United States Court of Appeals for the Fourth Circuit. Accordingly, the court GRANTS the government's motion to dismiss as successive, [DE #58]. Petitioner's motion to vacate, [DE #44, #50], is DISMISSED WITHOUT PREJUDICE to petitioner's right to apply to the Fourth Circuit for leave to file a successive § 2255 motion. The related pending motions, [DE #45 and DE #51], are DENIED as moot.

A certificate of appealability shall not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A petitioner satisfies this standard by demonstrating that reasonable jurists would find that an assessment of the constitutional claims is debatable and that any dispositive procedural ruling dismissing such claims is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). A reasonable jurist would not find this court's dismissal of Petitioner's § 2255 Motion debatable. Therefore, a Certificate of Appealability is DENIED.

This 10th day of June 2020.



Malcolm J. Howard
Senior United States District Judge

At Greenville, NC
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